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Report of the Working Group on the Universal Periodic Review*

Malaysia

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. The Government of Malaysia reaffirms its commitment to the principles and purposes of the UPR which it views as an important intergovernmental process that could contribute significantly towards improving human rights at the domestic level, inter alia, by providing a platform for transparent, positive and constructive dialogue.

2. The following sets out the Government of Malaysia's views on conclusions and/or recommendations made during Malaysia's Second Universal Periodic Review (UPR) on 24 October 2013 and which appear in paragraphs 146.1–146.232 of the draft UPR outcome report namely document A/HRC/25/10.

3. The Government has carefully examined all 232 recommendations in consultation with all relevant Federal agencies, State Governments as well as other stakeholders including the National Human Rights Commission of Malaysia (SUHAKAM) and other civil society organisations and is pleased to report that Malaysia is able to support 149 recommendations. In particular, 113 recommendations are accepted in full, 21 recommendations are accepted in principle and 15 recommendations are accepted in part.

4. In general, recommendations accepted in full indicate Malaysia's support for the spirit and the principle(s) underpinning those recommendations as well as its ability to implement them. Recommendations accepted in principle indicate that Malaysia is taking steps towards achieving the objectives of the recommendations but disagrees with the specific actions proposed; or that certain recommendations have already been implemented or are in the process of being implemented; or that Malaysia is not in a position to implement at this juncture. The Government's position on recommendations accepted in part is clarified in paragraph 8 below. The Government underscores that all recommendations accepted 'in principle' and 'in part' will be kept in full view alongside recommendations that are fully accepted and will be revisited in accordance with national priorities and needs.

5. Recommendations that do not enjoy Malaysia's support are generally those which call for immediate changes to existing laws, regulations and policies or touch on matters which the Government is not in a position to consider or commit to implement at this juncture. Malaysia is also unable to support certain recommendations that are based on factual inaccuracies or on mistaken underlying assumptions on the situation in the country. Malaysia's position on certain recommendations which do not enjoy its support is further clarified in paragraph 10 below. While unable to accept certain recommendations, Malaysia does not completely reject the possibility of revisiting those recommendations, as appropriate.

6. Recommendations that Malaysia fully accepts:

146.37, 146.38, 146.44, 146.45, 146.51, 146.52, 146.53, 146.54, 146.55, 146.57, 146.58, 146.59, 146.60, 146.61, 146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, 146.73, 146.74, 146.75, 146.78, 146.79, 146.80, 146.81, 146.82, 146.83, 146.84, 146.85, 146.86, 146.87, 146.88, 146.89, 146.90, 146.91, 146.92, 146.93, 146.95, 146.106, 146.128, 146.131, 146.132, 146.133, 146.134, 146.135, 146.136, 146.137, 146.138, 146.139, 146.140, 146.141, 146.142, 146.143, 146.147, 146.149, 146.154, 146.163, 146.164, 146.170, 146.171, 146.172, 146.173, 146.175, 146.176, 146.177, 146.178, 146.179, 146.180, 146.181, 146.182, 146.183, 146.184, 146.185, 146.186, 146.188, 146.189, 146.190, 146.191, 146.192, 146.194, 146.195, 146.196, 146.197, 146.198, 146.199, 146.200, 146.201, 146.202, 146.204, 146.205, 146.206, 146.207, 146.208, 146.214, 146.215, 146.216, 146.222, 146.223, 146.224, 146.226, 146.227, 146.228, 146.229,230, 146.231 and 146.232.

7. Recommendations that Malaysia accepts in principle:

146.1, 146.5, 146.9, 146.11, 146.14, 146.20, 146.22, 146.23 and 146.24, 146.26, 146.27, 146.48, 146.49, 146.94, 146.96, 146.97, 146.125, 146.153, 146.160, 146.169 and 146.187.

8. Malaysia partially accepts the recommendations below and offers the following clarifications:

Recommendation 146.7: Malaysia has acceded to the First and Second Optional Protocols to the Convention on the Rights of the Child (CRC) on 12 April 2012. Malaysia has no immediate plans to accede to the Third Optional Protocol to the CRC.

Recommendation 146.39: Malaysia reaffirms its commitment to continue cooperating with the Council's Special Procedures including by accepting official visits. Among the Special Procedures that have undertaken official visits to Malaysia in the recent past include the Special Rapporteur on the right to education, Working Group on Arbitrary Detention and the Special Rapporteur on the right to food. Numerous other mandate holders have visited Malaysia unofficially without restriction. Malaysia is open to further considering extending a standing invitation to the Special Procedures, however it has no immediate plans to do so.

Recommendation 146.76: The Human Rights Commission of Malaysia (SUHAKAM) has been regularly conducting human rights training for police officers and other law enforcement personnel. In addition, the Royal Malaysian Police (RMP) undertakes continuous training to ensure that their actions are in conformity with international human rights standards. RMP has in place a number of Standard Operating Procedures (SOP) towards this end. Most recently, RMP has adopted SOPs concerning implementation of security legislation and on the facilitation of peaceful assemblies under the Security Offences (Special Measures) Act 2012 and the Peaceful Assembly Act 2012, respectively. Malaysia is presently not in a position to immediately sign and ratify the Convention Against Torture (CAT).

Recommendations 146.105, 146.107,146.116 and 146.127: The research arm of the Attorney-General's Chambers is currently undertaking a comprehensive study to examine the legal and policy frameworks related to the application of the death penalty in Malaysia, scheduled for completion by end 2014. The findings and recommendations of the study will subsequently be presented to the Government for policy consideration and decision. In light of such developments, Malaysia is currently not in a position to commit to put in place an alternative to the death penalty and to establish a moratorium on its application. Malaysia has discontinued application of the death penalty on minors. Under current law, drug dealers and drug traffickers may still be subject to the death penalty. Malaysia rejects the assertion that seeks to equate torture, inhuman, cruel or degrading treatment or punishment with corporal punishment including whipping and other forms of punishment as prescribed under existing laws which are carried out only upon direction by the Courts and which remain valid and legal forms of punishment in the country.

Recommendation 146.130: The Domestic Violence Act 1994 [Act 521] was enacted to curb the use of violence by a person against his/her spouse as well as provides a platform for victims to seek protection and justice. Act 521 was amended in 2011 to widen the definition of "domestic violence" to cover emotional, mental and psychological abuses. The concept of marital rape is not recognised in Malaysia's legal system. That notwithstanding, Section 375A of the Penal Code was enacted to prevent husbands from causing hurt or the fear of death to his wife in order to have sexual intercourse with her.

Recommendation 146.148: This recommendation enjoys Malaysia's support to the extent that it is compatible with national laws and policies and its obligations under applicable international instruments. Relevant government agencies and SUHAKAM have conducted seminars, workshops and training programmes to promote awareness and

education in relation to human rights to police officers and other enforcement agencies. Malaysia is committed to maintain effective mechanisms to ensure an independent investigation of alleged misconduct by government officials, including law enforcement personnel. One such mechanism is the Enforcement Agency Integrity Commission (EAIC) established in 2009 aimed at addressing public complaints against law enforcement personnel, including police, immigration, customs and other Government authorities. Additionally, the Government established the Malaysian Anti-Corruption Commission (MACC) in 2008 to effectively and efficiently manage the nation's anti-corruption efforts.

Recommendation 146.150 and 146.151: Malaysia is of the view that this recommendation is factually inaccurate as early, forced and child marriage has never been a trend in Malaysia. Under the civil law, statutory minimum age of marriage has been fixed at 18 years old. However, a female who has attained the age of 16 years may nevertheless be married through authorization granted by the Chief Minister. Under the parallel *Syariah* legal system, no marriage may be solemnized where either the male is under 18 or the female is under 16 except where the *Syariah* Judge has granted his permission in writing in certain circumstances. Section 22(6) of the Law Reform (Marriage & Divorce) Act 1976 (LRA) provides that marriages shall not be solemnized unless both parties freely consent to the marriage. Similarly, the *Syariah* law does not recognize forced marriage and a marriage without consent or performed under coercion is considered void and can be annulled. Malaysia believes in the importance of preserving and upholding the sanctity of marriage between man and woman and of the family institution.

Recommendation 146.155: Currently, Malaysia has in place mechanisms for interreligious dialogue. The Government remains committed to continue its engagement on religious issues taking into account the relevant constitutional provisions relating to Islam and in accordance with national laws, policies and domestic circumstances. The Government is not in a position to consider establishing a structured interfaith dialogue at this juncture.

Recommendation 146.193: Malaysia provides education to children in the country in accordance with the present national legal framework and policies.

Recommendation146.217 and 146.218: Measures undertaken by the Government are confined to legal and documented foreign workers, subject to the different rights of nationals and non-nationals. While Malaysia will continue to safeguard the rights of legal and documented foreign workers, it has no immediate plans to enact additional legislation such as specific laws on foreign workers.

9. The following recommendations do not enjoy Malaysia's support:

146.2, 146.3, 146.4, 146.6, 146.8, 146.10, 146.12, 146.13, 146.15, 146.16, 146.17, 146.18, 146.19, 146.21, 146.25, 146.28, 146.98, 146.99, 146.100, 146.101, 146.102, 146.103, 146.104, 146.129, 146.40, 146.41, 146.42, 146.43, 146.145, 146.146, 146.152, 146.156, 146.157, 146.158, 146.159, 146.166, 146.167, 146.168, 146.174, 146.77, 146.203, 146.209, 146.210, 146.211 and 146.225.

10. Malaysia offers the following clarifications on recommendations which do not enjoy its support as listed below:

Recommendations 146.29, 146.30, 146.31, 146.32, 146.33 and 146.35: Presently, Malaysia has no plans to lift its reservations to the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Persons with Disabilities (CRPD). The Government underscores that such reservations do not run counter to the intent and purpose of those instruments and were made taking into account relevant constitutional provisions

and the Islamic (*Syariah*) law which together form an integral part of the country's legal framework.

Recommendation 146.34: Malaysia has taken steps to ensure that capital punishment is not imposed on persons under 18, in particular by rescinding the Essential (Security Cases) Regulations which ceased to have effect from 21 June 2012. The Government is currently reviewing its policy with a view to abolish practice of caning of children in schools.

Recommendation 146.36: The Government remains committed to take progressive steps in improving Malaysia's compliance with international human rights standards. Such standards are given effect at the domestic level by among others the enactment of certain new laws and through the review of existing laws and policies.

Recommendations 146.46, 146.212 and 146.213 (on situation of indigenous peoples): Malaysia continues to take steps to better protect and respect the human rights of its indigenous population. Towards this end, SUHAKAM had undertaken an independent National Inquiry into the Land Rights of Indigenous Peoples, the findings and recommendations of which were submitted to the Government in August 2013. Currently, a Task Force comprising senior government officials, civil society representatives and academicians are in the process of determining, inter alia, details on which recommendations can be implemented in the short, medium and long term. The Government is committed to ensure that the report would be reviewed in a balanced and positive manner and takes into account the best interests of Malaysia's indigenous peoples. The Task Force's recommendations would be the platform for the formulation of a blueprint for the proposed reforms of indigenous land and policies once approved by the Cabinet. As the Government does not wish to pre-judge the outcome of the Task Force's deliberations, Malaysia is unable to accept these recommendations at this juncture.

Recommendation 146.47: Malaysia has no plans to review the recent amendments to the Prevention of Crime Act 1959. Malaysia reiterates that human rights norms and standards were taken into consideration when proposing amendments to the Act including on the issuance of detention orders by the Prevention of Crime Board and on the possibility of judicial review of decision of the Board.

Recommendation 146.50: Article 121(1A) of the Federal Constitution which states, inter alia, that the High Courts shall have no jurisdiction in respect of any matter within the jurisdiction of the *Syariah* courts clearly demarcates the jurisdiction of the two legal systems in Malaysia. As such, Malaysia reaffirms that there is no conflict of competence between the Civil and *Syariah* Courts in Malaysia.

Recommendation 146.56: Malaysia is unable to support this recommendation as it has been overtaken by events. Recommendations of the 2005 Royal Commission on the establishment of an Independent Police Complaints and Misconduct Commission were duly considered by the Government leading to the establishment of the EAIC in 2009.

Recommendations 146.108, 146.109, 146.110, 146.111, 146.112, 146.113, 146.114, 146.115, 146.117, 146.118, 146.119, 146.120, 146.121, 146.122, 146.123 and 146.124: Malaysia reaffirms the understanding that the death penalty is not prohibited under international law and further reiterates that matters pertaining to the administration of justice fall under the State's sovereign authority and jurisdiction. Malaysia further notes that several retentionist States that have previously imposed voluntarily moratorium on the death penalty have recently reintroduced its application. Given that a comprehensive study is currently being undertaken by the Government on this matter, Malaysia is presently not in a position to accept these recommendations.

Recommendation 146.126: Corporal punishment is a form of punishment provided for under existing laws in Malaysia. It is only imposed on serious offences and is only carried pursuant to the order of the courts. Malaysia is unable to support this recommendation as it equates torture, cruel, inhuman or degrading treatment and punishment with corporal punishment which is a valid and legal form of punishment in Malaysia.

Recommendation 146.144: Malaysia does not detain victims of trafficking in persons. However, such victims are required to reside in shelters provided for and gazetted by the Government with a view to afford them better protection and safety. The Government provides income-generating facilities and programmes in such shelters in order to further assist such victims.

Recommendation 146.161: Amendments to the Printing Presses and Publication Act (PPPA) introduced in 2012 clearly establishes the element of "right to be heard" before decisions on revoking or suspending media licenses or permits.

Recommendation 146.162: At present, Malaysia is not party to the ICCPR. Article 10 of the Federal Constitution provides for the exercise of the right to freedom of speech, subject to certain restrictions which are in consonance with international human rights standards. Malaysia maintains that certain restrictions provided for under the Sedition Act and the PPPA are in line with the permissible limitations under the relevant international human rights instruments.

Recommendation 146.165: The Peaceful Assembly Act 2012 was enacted to ensure that all citizens have the right to organize assemblies or to participate in assemblies, peaceably and without arms. Malaysia has no plans to revise this Act at this juncture.

Recommendation 146.174: Negotiations on the Trans-Pacific Partnership Agreement (TPPA) are currently underway. At this juncture, Malaysia is of the view that it would be premature to prejudge the outcome of those negotiations.

Recommendations 146.219, 146.220 and 146.221: Protection scope for migrant workers in Malaysia extends to documented foreign workers excluding their family members. Every person entering Malaysia, including undocumented migrants are subject to the applicable laws and regulations including the Immigration Act and are afforded protection under the law, as appropriate. Malaysia maintains that decisions on the possible naturalisation or the regularisation of status of aliens residing in the country is a sovereign matter.